U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-H-J-

DATE: OCT. 20, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a surgeon and researcher in the field of oral and maxillofacial surgery, seeks classification as an individual of exceptional ability in the sciences or as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(A). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent residence. It also makes immigrant visas available to individuals with a degree of expertise significantly above that normally encountered in the sciences, arts, or business. The Petitioner also seeks a national interest waiver (NIW) of the job offer requirement that is normally attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner had not established his eligibility as an individual of exceptional ability nor did he establish that a waiver of the job offer requirement is in the national interest. The Director did not address the Petitioner's claim that he is eligible as a member of the professions holding an advanced degree. The Director also denied a subsequent motion to reopen and to reconsider.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief in which he claims that the Director's decision did not "sufficiently articulate a ground for denial," that it was "adjudicated under an improper standard of review using incorrect legal analysis," and that the Director "unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations."

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires

that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of Job Offer –
>
> (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]
>
> (ii)(I) The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if –
>
> (aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and
>
> (bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must demonstrate that the national interest would be adversely affected if a labor certification were required by establishing that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Petitioner asserts that he is eligible for classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an individual of exceptional ability in the sciences. In response to the Director's request for evidence (RFE), the Petitioner states that he is also eligible for classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director found that the Petitioner was not eligible as an individual of exceptional ability and that he did not establish that a waiver of the job offer requirement is in the national interest. He did not address the Petitioner's eligibility as an advanced degree professional.

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification, *inter alia,* to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(l). A petition for an advanced degree professional must establish that the Beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree.

The Petitioner submitted a foreign degree equivalency evaluation reflecting that he received the equivalent of a doctor of dental surgery, a master's degree in dental science, and a PhD in dental science, from along with a doctor of medicine degree from Thus, we find that he qualifies as an advanced degree professional under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

As the Petitioner is eligible for the underlying immigrant classification as a member of the professions holding an advanced degree, an additional finding of exceptional ability would serve no meaningful purpose in this matter. Thus, the remaining issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest according to the three-pronged analysis set forth in *NYSDOT*.

A. Substantial Intrinsic Merit

At the time of filing, the Petitioner was employed as chief of dental surgery at in Korea. He also states that he is the medical director of The Petitioner submitted documentation showing that his work as a physician and dentist specializing in oral and maxillofacial surgery is in an area of substantial intrinsic merit. For example, the record includes information from the explaining the importance of periodontal health and the burden of oral disease, along with information from the explaining the connection between oral disease and systemic disease. Accordingly, we find that the Petitioner meets the first prong of the *NYSDOT* national interest analysis and the Director's determination on this issue is withdrawn.

B. National Scope

The Petitioner stated that his work "pioneering much needed efforts to create more cost effective and reliable treatments for patients requiring oral implants and reconstructive surgery" is in the national interest of the United States. The second prong of the *NYSDOT* national interest analysis requires that the benefit arising from the Petitioner's work will be national in scope. The Director determined that the Petitioner had not met this requirement because the benefit of his research was limited to in Korea. We disagree with the Director's determination that the Petitioner did not meet the second prong of the *NYSDOT* analysis based on the fact that his work was performed in Korea. *NYSDOT*'s second prong is prospective in nature, and not limited to the Petitioner's past achievements, but rather, whether the proposed benefit will be national in scope. Accordingly, we withdraw this portion of the Director's decision.

On appeal, the Petitioner points to a letter from professor and director of the at who explains that the Petitioner's work with dental bone graft surgery is critical to the field. indicates that the Petitioner's "research has been a driving force behind the success and advancement of the multidisciplinary comprehensive treatment and research," and that the Petitioner is "highly renowned for his excellent lectures and papers in the field of orthognathic surgery." further stated, "[The Petitioner] is greatly contributing to the development of oral and maxillofacial surgery field of Korea with his talent and capability."

The Petitioner submitted evidence that he has published thirty articles in highly ranked professional journals articulating the results of his research. He also submitted evidence that he has authored chapters in medical textbooks and presented at industry conferences, including the comprised of eight oral maxillofacial surgeons from around the

world. The submitted documentation shows that the proposed benefit of his oral and maxillofacial research has national and international scope, as the results from his work are disseminated to others in the field through conferences and journals. Accordingly, we find that the Petitioner meets the second prong of the *NYSDOT* national interest analysis, and the Director's determination on this issue is withdrawn.

C. Influence on the Field

It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The Director determined that the Petitioner's impact and influence on his field did not satisfy the third prong of the *NYSDOT* national interest analysis.

In addition to documentation of his published work, conference presentations, peer review activities, research projects, professional memberships, and medical training credentials, the Petitioner submitted various reference letters discussing his work in the field. Several letters included statements that the Petitioner's research has "contributed" or has affected the practice of oral and maxillofacial surgery, but neither the content of the letters or the evidence in the record is sufficient to support a finding that his research has been widely implemented in clinical settings. For example, professor and chairman, claims that, "as a result of his clinical research and work, our colleagues in the field can now evaluate more precisely patients with facial asymmetry and acquire better results in their own treatment plans." does not explain how the Petitioner's work was disseminated, who exactly has implemented his techniques, nor does he point to treatment plans that have been modified according to the Petitioner's findings. Without a more specific explanation, coupled with documentary evidence in the record, we are unable to determine that the Petitioner's findings have already influenced clinical treatments of such conditions. Statements made without supporting documentary evidence are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Similarly, professor of oncology, stated: "[The Petitioner] is currently involved in the clinical research on artificial bone for oral and maxillofacial rehabilitation as a principle investigator. I expect a pioneering, promising result in his research." While attested to the potential impact of the Petitioner's work, he did not offer any examples indicating that the Petitioner's work has already impacted medical practices or has otherwise influenced the field as a whole. A petitioner cannot successfully petition under this classification based on the expectation of future eligibility. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The Petitioner states that the implications of his work regarding single tooth implants "benefit individuals around the world by preventing the use of this ineffective implant in patients requiring a molar implant, reducing treatment costs by eliminating failed implants and subsequent corrective

surgery." The Petitioner also insists that his work is "greatly advancing the research and clinical techniques for the Oral and Maxillofacial Surgeons in both South Korea and internationally." However, he has not provided evidence demonstrating that his work has affected diagnostic or treatment protocols for implant patients at other medical treatment facilities, has been frequently cited by other investigators in their medical research, or has otherwise influenced the field as a whole. The Petitioner also states that due to his "research, original contributions, and publications, physicians all over the country are able to reference and utilize his innovative research in their practice," but he provides no evidence that his work had an impact beyond the patients and staff at his hospitals. Furthermore, there is no evidence showing that the Petitioner's work as an evaluator, teacher, or clinician has influenced the field as a whole.

Regarding his published and presented work, there is no presumption that every published article or conference presentation demonstrates influence on the field as a whole; rather, the Petitioner must document the actual impact of his articles or presentations. The Petitioner has submitted evidence that he has authored or co-authored 30 articles that have been published in scholarly journals, some with significant impact factors. However, there is no evidence showing that once disseminated through publication or presentation, the Petitioner's work has garnered a significant number of independent citations or that his findings have otherwise influenced the field as a whole.

The Petitioner further claims that his role as a member of the publication committee and editorial board for the is evidence of his impact on the field as a whole. However, the evidence presented indicates that the Petitioner has performed peer review on four occasions for this journal, and that he is one of 78 "editorial review board members." There is no evidence demonstrating that the Petitioner's occasional participation in the widespread peer review process, even in the editorial process, is an indication of his impact on the field.

With respect to the documentation reflecting that the Petitioner has presented his findings at oral and maxillofacial meetings and medical conferences, we note that many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, healthcare organizations, employers, and government agencies promote and sponsor these meetings and conferences. Although presentation of the Petitioner's work demonstrates that he shared his original findings with others, there is no documentary evidence showing, for instance, frequent independent citation of his work, the use of his findings by other physicians, or that his findings have otherwise influenced the field of oral and maxillofacial surgery at a level sufficient to waive the job offer requirement.

On appeal, the Petitioner provides a personal statement listing his medical experience, training qualifications, research activities, instruction of students, and honors, but as indicated above, there is no documentary evidence showing that his work has affected the field of oral and maxillofacial surgery as a whole. The Petitioner contends that his work with as the principal investigator of a clinical trial, is evidence of his impact on the field. Yet, he does not explain his role, provide evidence confirming his role, or provide evidence that the results of the clinical trial

impacted the field of oral and maxillofacial surgery. General information regarding [redacted] is not sufficient to demonstrate the Petitioner's role in the study or its impact on the field.

In addition, the Petitioner mentions his "leading" and "critical" roles in "high ranking teaching hospitals." With respect to the Petitioner's hospital duties and clinical skills as a physician and oral surgeon, any objective qualifications that are necessary for the performance of the occupation can be articulated in an application for labor certification. *See NYSDOT*, 22 I&N Dec. at 220-21. The testimonial letters discussing the Petitioner's medical skills and research projects have already been addressed above. Again, the submitted evidence does not show that the Petitioner's work has had an impact on the field as a whole as to warrant a waiver of the job offer. There is no indication that the Petitioner's roles had an impact beyond the patients and staff at his hospitals.

The Petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *Id.* In addition, uncorroborated statements are insufficient. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *See also Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the submitted reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate his eligibility for the national interest waiver.

We find that the Petitioner did not demonstrate that the Beneficiary has had sufficient influence on his field to satisfy the third prong of the *NYSDOT* analysis. As stated above, that prong requires a petitioner to demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. To do this, a petitioner must establish "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n. 6. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

III. CONCLUSION

Considering the letters and other evidence in the aggregate, the record does not establish that the Petitioner's work has influenced the field as a whole or that he will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum

qualifications. The Petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification he seeks.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Although a petitioner need not demonstrate notoriety on the scale of national acclaim, he must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n.6. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

It is the petitioner's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of J-H-J-*, ID 10887 (AAO Oct. 20, 2016)